FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 602/2004

Appeal Application No. Writ petition	District : of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : April 13, 2007.

Heard Shri Deshpande for the appellant and Shri Choudhari for the respondent no.1.

The appellant is the original defendant. A suit was filed by the respondent no.1-Neminath against one Nanibai for possession of the suit property, which is a residential house. According to the plaintiff-Neminath, one Khabuji was the owner of the suit property. Khabuji had two wives; Nanibai and Anusayabai. Pandharinath, son of Nanibai, had predeceased Nanibai. Anusayabai had two sons; Neminath and Suresh. According to the plaintiff, Khabuji had partitioned the immovable properties belonging to the family by a registered partition deed in the year 1962. The registered partition deed is marked as Exh.62. It is the case of the plaintiff that

the suit house fell to the share of Khabuji in the partition effected in the year 1962. Khabuji had executed a Will Exh. 137, bequeathing the suit property partially in favour of Neminath and partially in favour of Suresh. Suresh had, by an exchange deed Exh.81, exchanged his part of the suit property with certain other property belonging to Neminath. Hence Neminath became the sole owner of the house property involved in the suit. Though the suit was initially filed against Nanibai by Neminath for possession of the suit property, after the death of Nanibai, the present appellant Dattatraya was arrayed as a defendant to the civil suit. According to Datatraya, he had become the owner of the suit property in view of a gift deed Exh.150 executed by Nanibai in his favour.

The defendant denied the claim of the plaintiff and pleaded that Nanibai was residing in the suit property as an owner thereof. According to Nanibai, since she was the owner of the suit property, the property was gifted to Dattatraya who was her brother's son.

The trial Court, on a consideration of the evidence on record, has held that the plaintiff had failed to prove his case and his

ownership over the suit property and, therefore, dismissed the suit filed by the plaintiff. In an appeal preferred by the plaintiff against the judgment passed by the trial Court, findings recorded by the trial Court were reversed. The appellate Court mainly relied on the partition deed at Exh. 94 to hold that the suit property was allotted to the share of Khabuji under the partition effected in the year 1962. Since Khabuji was the sole owner of the property in view of the partition, he had every right to bequeath the suit property in favour of Neminath and Suresh. The appellate Court, after considering the exchange deed between Suresh and Neminath, held that Neminath had become the sole owner of the suit property. Since the ownership of Neminath was held to be proved, the appellate Court granted a decree for possession. The case put forth by Nanibai that she was staying in the suit property as an owner thereof and in her own right, was negatived by the appellate Court.

The findings recorded by the appellate Court are pure findings of fact which do not give rise to any substantial question of law. The view taken by the appellate Court while recording the finding is a reasonable

and possible view.

Since no substantial question of law arises for consideration in this second appeal, same is dismissed with no order as to costs.

JUDGE

RMP